

1 LYSSA S. ANDERSON
Nevada Bar No. 5781
2 KRISTOPHER J. KALKOWSKI
Nevada Bar No. 14892
3 KAEMPFER CROWELL
1980 Festival Plaza Drive, Suite 650
4 Las Vegas, Nevada 89135
Telephone: (702) 792-7000
5 Fax: (702) 796-7181
landerson@kcnvlaw.com
6 kkalkowski@kcnvlaw.com

7 *Attorneys for Defendants*
8 *Joshua Costello and Derek Franklin*

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 Case No.: 3:19-cv-00347-MMD-CSD

12 JAMES EDWARD SCOTT ,
13 Plaintiff,
14 vs.
15 NAPHCARE, et al.
16 Defendants.

**ORDER GRANTING
LVMPD DEFENDANTS' MOTION FOR
EXTENSION OF TIME TO FILE REPLY
BRIEFS IN SUPPORT OF MOTIONS FOR
SUMMARY JUDGMENT
(1st Request)
[ECF Nos. 87, 88]**

17
18 Defendants Joshua Costello and Derek Franklin (collectively "LVMPD Defendants"), by
19 and through their counsel, Kaempfer Crowell, respectfully request a two-week extension of time
20 to file reply briefs in support of their pending Motions for Summary Judgment, (ECF Nos. 87,
21 88). The current deadline for LVMPD Defendants to file reply briefs is March 23, 2022. (See
22 Responses ECF Nos. 101, 102). The requested extension would create a new deadline of April
23 6, 2022. Good cause supports the requested extension for the reasons stated in the below
24 Memorandum of Points and Authorities.

1 DATED this 21st day of March, 2022.

2 KAEMPFER CROWELL

3 By: /s/ Lyssa S. Anderson

4 LYSSA S. ANDERSON (Nevada Bar No. 5781)
5 KRISTOPHER J. KALKOWSKI (Nevada Bar No. 14892)
1980 Festival Plaza Drive, Suite 650
6 Las Vegas, Nevada 89135

7 *Attorneys for Defendants*
8 *Joshua Costello and Derek Franklin*

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. PROCEDURAL HISTORY**

11 Plaintiff James Scott initiated this lawsuit on June 21, 2019, by filing an Application to
12 proceed *in forma pauperis* alongside a Complaint, (ECF No. 1). The Court granted the
13 Application then Screening the Complaint through on Order entered May 13, 2020. (Order, ECF
14 No. 3).

15 Following discovery, LVMPD Defendants filed separate Motions for Summary
16 Judgment, (ECF Nos. 87, 88). The Court issued a briefing schedule identifying Plaintiff's
17 response deadline as January 26, 2022, (Min. Order, ECF No. 89); however, Plaintiff requested
18 more time to respond. (Mot. Extend Time, ECF No. 90) (filed January 19, 2022). The Court
19 granted Plaintiff's request and extended his response deadline to March 11, 2022. (Order, ECF
20 No. 93) (entered January 20, 2022).

21 Before filing a response to LVMPD Defendants' Motions for Summary Judgment,
22 Plaintiff filed two Motions with the Court: a Motion asking the Court to appoint him an
23 independent expert, (ECF No. 98), and a Motion asking for an extension of deadlines until the
24 Court rules on the request for an appointed expert, (ECF No. 100). Both Motions are still

1 pending, and briefing is complete.

2 Plaintiff ultimately complied with the Court-given response deadline to oppose LVMPD
3 Defendants' Motions for Summary Judgment. (Responses, ECF Nos. 101, 102) (filed March 9,
4 2022). LVMPD Defendants' reply deadline is currently set for March 23, 2022.

5 **II. ARGUMENT**

6 Local Rule IA 6-1 provides the governing legal standard for an extension of briefing
7 deadlines regarding non-discovery motions pending before the Court. *See* D. Nev. Local R. IA 6-
8 1. This Local Rule authorizes extensions of time for a non-expired deadline so long as the
9 requesting party provides "good cause" for the extension. *Id.* (imposing a "good cause" standard
10 for requests made before the deadline has expired, but imposing an "excusable neglect" standard
11 for requests made "after the expiration of the specific period").¹

12 Here, good cause exists for an extension of LVMPD Defendants' current deadline of
13 March 23, 2022, to file reply briefs in support of their Motions for Summary Judgment.
14 LVMPD Defendants' counsel has recently had a grueling litigation schedule—including drafting
15 an appellate brief before the Ninth Circuit that was due on March 16, 2022, which involved
16 complex legal issues of collateral estoppel, federal exhaustion doctrines, and a constitutional
17 challenge to a Clark County ordinance; multiple depositions at the beginning of this month and
18 two depositions this week (one on March 23 and another on March 24); and written discovery
19 obligations and motion practice in other lawsuits. These responsibilities significantly reduced
20 LVMPD Defendants' counsel's available time to draft reply briefs for summary judgment in this

21
22 ¹ Because this extension request from LVMPD Defendants does not concern a discovery
23 deadline or discovery issue, there is not a requirement for LVMPD Defendants to attempt a
24 meet-and-confer conference with Plaintiff. Moreover, the only method of communication
between the parties is by mail due to Plaintiff's incarcerated status. A timely meet-and-confer
attempt through mail was not practical between the date that Plaintiff filed his responses
opposing summary judgment and the date that LVMPD Defendants' reply briefs are due.

lawsuit. Also, counsel's available time for this lawsuit was further reduced when addressing Plaintiff's recent motions pending before the Court regarding appointment of an independent expert.

In order to thoroughly address summary judgment, LVMPD Defendants request a two-week extension of time for their reply deadline. If granted, their new deadline will be April 6, 2022. Extending this deadline will ensure that the Court has adequate briefing to address the merits of Plaintiff's claims and potentially resolve this lawsuit before trial. A two-week extension will not prejudice Plaintiff because there are no ongoing discovery obligations at this stage and a trial date has not been set.

III. CONCLUSION

For the reasons stated in this Motion, LVMPD Defendants respectfully request a two-week extension of time to file reply briefs in support of their Motions for Summary Judgment. Good cause supports the request and, if granted, the new deadline will be April 6, 2022.

DATED this 21st day of March, 2022.

KAEMPFER CROWELL

By: /s/ Lyssa S. Anderson

LYSSA S. ANDERSON (Nevada Bar No. 5781)
KRISTOPHER J. KALKOWSKI (Nevada Bar No. 14892)
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

Attorneys for Defendants
Joshua Costello and Derek Franklin

IT IS SO ORDERED.

DATED: March 22, 2022.



UNITED STATES MAGISTRATE JUDGE